

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOMINGO MARTINEZ-DELEÓN,

Petitioner,

v.

CAROL HOLINKA, Warden FCI Oxford,

Respondent.

ORDER

09-cv-501-bbc

Petitioner Domingo Martinez-Deleón, a prisoner at the Federal Correctional Institution in Oxford, Wisconsin, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, contending that prison officials violated his right to due process when they held a disciplinary hearing at which he lost good-time credits and denied him the right to be present or offer a defense on his behalf. On August 25, 2009, I directed respondent Carol Holinka to file a response showing cause, if any, why petitioner's writ should not be granted. I told respondent that she had 20 days from the date of service of process to respond to petitioner's petition. Respondent has not yet responded to the show cause order. Now before the court is petitioner's motion for entry of default against respondent.

Petitioner's motion must be denied because respondent has not been properly served.

Under Fed. R. Civ. P. 4(i)(2), a party suing a federal employee in her official capacity “must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the . . . employee;” under Rule 4(i)(1)(A), to serve the United States, a party must “deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought,” and “send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.” As respondent Holinka points out in her September 28, 2009 response to petitioner’s motion for default, dkt. #8, she has not been officially served, so she is not in default. To correct this deficiency, I will send copies of the petition, the August 25 order and this order via certified mail to respondent, the local United States attorney and the United States Attorney General. Petitioner should not attempt to complete service on his own behalf. Respondent may have 20 days from the date she receives service to file a response to the show cause order.

ORDER

IT IS ORDERED that:

1. Petitioner Domingo Martinez-Deleón’s motion for entry of default, dkt. #7, is DENIED.
2. Copies of petitioner’s petition, dkt. #1, the August 25 order, dkt. #3 and this

order are being sent via certified mail to the U.S. Attorney General, the U.S. Attorney for the Western District of Wisconsin and respondent Carol Holinka.

3. Respondent may have 20 days from the date of service of the petition to file a response showing cause, if any, why this writ should not issue with respect to petitioner's claim that he was not given an opportunity to be present or offer any evidence or defense at an April 21, 2009 disciplinary hearing at which he lost good-time credits.

4. Petitioner may have 20 days from the service of the response in which to file a traverse to the allegations contained in the response submitted by respondent.

Entered this 29th day of September, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge